

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

FILE COPY

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

JAMES H. KONSELLA, R.PH.,  
RESPONDENT.

:  
:  
: FINAL DECISION AND ORDER  
: 89 PHM 88  
:  
:

The parties to this action for the purposes of § 227.53, Wis. Stats., are:

James H. Konsella, R.Ph.  
Rt 3 Box 184  
Chippewa Falls, WI 54729

Wisconsin Pharmacy Examining Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

**FINDINGS OF FACT**

1. Respondent James H. Konsella, is and was at all times relevant to the facts set forth herein a Registered Pharmacist licensed in the State of Wisconsin pursuant to license # 7479.

2. The Respondent did, on 6/30/87, dispense 30 propoxyphene/APAP to patient J.D., purportedly as a refill of prescription 138432, but without recorded authorization. That prescription was clearly marked "non repetatur" and had been previously filled by respondent on 6/25/87.

3. On 3/3/88 respondent filled a prescription for 60 diazepam 10 mg., with instructions to take 1 three times per day, for patient K.M. The prescription was dated 2/2/88, and authorized 3 refills. Respondent refilled this prescription on 3/16, 3/21, and 4/11, each time with 60 tablets, 10 mg. On or near 4/25/88, respondent received a telephoned prescription from the same physician for 60 diazepam 10 mg., take one three times per day, three refills. Respondent filled this prescription for the patient on 4/25/88, and refilled the prescription on 5/9, 5/23, 6/6, and 8/26.

4. On Monday, 3/20/89, respondent filled a telephoned prescription for 30 Tylox (a Schedule II controlled substance) for patient J.S.

5. On 3/28/89, respondent filled a prescription for 30 Tylox (a Schedule II controlled substance) for patient J.S. Respondent noted "Got 30 on 3-20-89" but did not document any steps taken to discuss the matter with the prescriber or counsel the patient. The prescription did not contain the patient's address.

6. On and between 3/13/87 and 5/30/89, respondent dispensed chlordiazepoxide 25 mg., a controlled substance, to patient J.S. on the prescriptions of one physician, on the following schedule:

<u>Date</u>	<u>#</u>	<u>Dose Instructions</u>
3/13/87	60	Take one four times per day
10/25/88	100	Take one with each meal and at bedtime
10/29	60	Take one, three times per day
2/28/89	100	Take one, three times per day
4/25	60	Take one with each meal
5/2	30	Take one, three times per day
5/8	60	Take one with each meal and at bedtime.
5/16	60	same (new Rx)
5/24	60	same (new Rx)
5/30	60	same (new Rx)

7. On 2/24/87, respondent dispensed 50 Xanax 0.5 mg. to patient M.S. on the prescription of Dr. H. The prescription form authorized 5 refills. The dosage instruction were to take one three times per day "prn anxiety." Respondent refilled this prescription on 3/3, 3/13, 3/23, 4/6, and 4/20, for a total of 300 tablets in less than 60 days.

8. On and between 1/6/87 and 4/3/87, respondent dispensed 450 tablets of Wygesic to patient M.P. on the following schedule, all purportedly on the prescriptions of the same physician:

<u>Date</u>	<u>#</u>	<u>Dose and Other Instructions on Prescription</u>
1/6/87	30	One, three times per day "Must last 10 days" No refills
1/12	30	refilled
1/19	30	refilled
1/24	30	refilled
1/31	30	refilled
2/9	30	refilled
2/13	30	Take one, three times per day. No refills
2/16	30	refilled
2/23	30	refilled
3/1	30	refilled
3/9	30	refilled
3/15	30	Take one, three times per day "must last 10 days" no refills
3/21	30	refilled
3/27	30	refilled
4/3	30	refilled

9. On and between 4/18/87 and 5/18/87, respondent dispensed 180 propoxyphene 65 mg to patient M.P. by telephoned prescription on the following schedule:

<u>Date</u>	<u>#</u>	<u>Dose and Other Instructions on Prescription</u>
4/18	30	Take one three times per day "Must last 10 days" [refill authorization space is covered by pharmacist sticker, which appears to indicate no refills]
4/27	30	refilled
5/3	30	refilled
5/9	30	refilled
5/14	30	refilled
5/18	30	refilled

10. On and between 5/23/87 and 7/13/87, respondent dispensed 300 propoxyphene 65 mg to patient M.P. by telephoned prescription which authorized one refill, on the following schedule:

<u>Date</u>	<u>#</u>	<u>Dose and Other Instructions on Prescription</u>
5/23/87	60	Take one three times per day
5/30	30	refilled
6/3	30	refilled
6/9	30	refilled
6/15	30	refilled
6/22	30	refilled
6/29	30	refilled
7/6	30	refilled
7/13	30	refilled

11. On and between 7/20/87 and 10/5/87, respondent dispensed 360 propoxyphene 65 mg to patient M.P. by telephoned prescription which authorized no refills, on the following schedule:

<u>Date</u>	<u>#</u>	<u>Dose and Other Instructions on Prescription</u>
7/20/87	60	Take one three times per day "Must last 2 weeks"
8/1	24	refilled
8/10	36	refilled
8/17	30	refilled
8/24	30	refilled
8/31	30	refilled
9/5	30	refilled
9/14	30	refilled
9/21	30	refilled
10/2	30	refilled
10/5	30	refilled

12. On and between 10/13/87 and 11/15/87, respondent dispensed 180 propoxyphene 65 mg to patient M.P. by telephoned prescription on the following schedule:

<u>Date</u>	<u>#</u>	<u>Dose and Other Instructions on Prescription</u>
10/13/87	30	Take one three times per day, 4 refills
10/18	24	refilled
10/26	36	refilled
11/2	30	refilled
11/9	30	refilled
11/15	30	refilled

13. On 1/12/88 respondent dispensed 100 propoxyphene 65 mg to patient M.P. by telephoned prescription from Dr. S., which does not bear the address of the patient, with instructions to take one, three times per day. On 1/26/88, the patient presented respondent with a written prescription from the same physician for 30 propoxyphene 65 mg., no refills, dated the same day. Respondent placed a notation upon the prescription: "called Dr. Sam OK 60 cap" and dispensed 60 capsules. Respondent then refilled this prescription on the following schedule:

<u>Date</u>	<u>#</u>
2/6/88	30
2/12	30
2/18	30
2/23	30
2/29	30
3/7	30
3/14	30
3/21	30
3/28	30
4/3	30

14. On 10/14/88, respondent dispensed a telephoned prescription from Dr. S. for patient M.P. of 40 propoxyphene NAP/650 APAP, with instructions to take one every 6 hours as needed for pain. No refills were authorized. Respondent refilled this prescription on 10/14.

15. In each of the above cases, respondent states that he telephoned the physician's office and received oral authorization to dispense the medication. However, no documentation of such contact was made, other than the entry in the profile that the medication was dispensed.

#### CONCLUSIONS OF LAW

16. The Wisconsin Pharmacy Examining Board has jurisdiction to act in this matter pursuant to § 450.10(1), Wis. Stats.

17. The Board is authorized to enter into the attached Stipulation pursuant to § 227.44(5), Wis. Stats.

18. The conduct described in paragraphs 2-15, above, violated one or more of the following: §§ 161.38(3), 450.10(1)(a)2. and 6., and 450.11(5), Wis. Stats., or § Phar 8.05(1) and (2), 8.06(2)(a), 8.09(1)(c) and (2)(b), and 10.03(2), Wis. Adm. Code, and 21 CFR §1306.22(a)(4).

**ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the license to practice pharmacy of James H. Konsella, R.Ph, is hereby SUSPENDED for 75 days, effective at 12:01 AM on January 26, 1993 (and until the costs imposed by this order are paid).

IT IS FURTHER ORDERED, that respondent shall forfeit \$2,000, to be paid within 60 days.

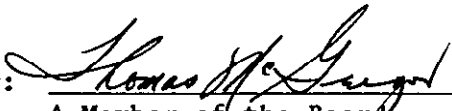
IT IS FURTHER ORDERED, that the license of respondent is hereby LIMITED in the following respect:

Respondent shall not be the managing pharmacist of any pharmacy, including on a temporary or acting basis, until respondent takes and passes both the Federal Drug Law Examination and the Wisconsin Pharmacy Jurisprudence Examination. The state examination may, at respondent's option, be taken through the PLATO professional development center. Upon proof of passing the examinations, the staff of the department shall notify respondent of such fact, and this limitation shall be removed without formal action by the board. Respondent shall not attempt either exam more than twice without express permission of the board, which shall determine, in its sole discretion, the terms and conditions under which the exam may be taken a third time.

IT IS FURTHER ORDERED, that respondent shall pay the costs of this proceeding in the amount of \$1,800, within 30 days of this order.

Dated this 8<sup>th</sup> day of December, 1992.

WISCONSIN PHARMACY EXAMINING BOARD

by:   
A Member of the Board

AKT:dms  
ATY-2280

STATE OF WISCONSIN  
BEFORE THE PHARMACY EXAMINING BOARD

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IN THE MATTER OF :  
DISCIPLINARY PROCEEDINGS AGAINST :

JAMES H. KONSELLA, R.P.H., :  
RESPONDENT. :

STIPULATION  
89 PHM 88

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It is hereby stipulated between the above Respondent, personally on his own behalf, and the Department of Regulation and Licensing, Division of Enforcement by its undersigned attorney as follows:

1. This Stipulation is entered into as a result of a pending investigation of licensure of Respondent by the Division of Enforcement. Respondent consents to the resolution of this investigation by Stipulation and without a hearing on the formal complaint which has been issued in this matter.

2. Respondent is aware and understands his rights with respect to disciplinary proceedings, including the right to a statement of the allegations against him; a right to a hearing at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel attendance of witnesses by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. By entering to this Stipulation, Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondent is aware of his right to seek legal representation and has obtained legal advice prior to execution of this Stipulation.

5. With respect to the attached Final Decision and Order, Respondent denies the facts set forth in the Findings of Fact, and denies the Conclusions of Law, but agrees that the Board may enter the Order to avoid the necessity of further litigation.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Division of Enforcement for further proceedings under a new scheduling order. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that either the Board or the Respondent has been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to this Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that an attorney for the Division of Enforcement may appear at any deliberative meeting of the Board, in open or closed session, without the presence of Respondent or Respondent's attorney, with respect to this Stipulation but that appearance is limited to statements solely in support of this Stipulation, and to answering questions asked by the Board and its staff, and for no other purpose.

9. The Division of Enforcement joins Respondent in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.

10. Respondent is informed that should the board adopt this stipulation, the board's final decision and order adopting the terms of the stipulation will be published in the Monthly Disciplinary Report issued by the department, and a summary of the order adopting the terms of the stipulation shall be published in the Wisconsin Regulatory Digest issued semiannually by the department, all of which is standard Department policy and in no way specially directed at Respondent.

11-25-92  
Date

James H. Konella  
Respondent

11-25-92  
Date

Robert J. Kasietz  
Robert J. Kasietz,  
Attorney for Respondent

11/25/92  
Date

Arthur Thexton  
Arthur Thexton, Prosecuting Attorney  
Division of Enforcement

AKT:dms  
ATY-2279



## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each, and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Pharmacy Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Pharmacy Examining Board

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Pharmacy Examining Board.

The date of mailing of this decision is December 10, 1992.